



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-192518

DATE: August 9, 1979

DW 02560

MATTER OF: [Management of Young Adult Conservation Corps]

DIGEST: 1. The Secretary of Labor has explicit authority in the Comprehensive Employment and Training Act of 1973, 29 U. S. C. § 801, to make grants, contracts, or agreements to carry out CETA projects established by title VIII of CETA. Through inter-agency agreements with the Secretary, the Secretaries of the Interior and of Agriculture are to "provide for" actual implementation of YACC projects. As heads of executive departments, they have the inherent authority to provide by contract needed services except for selection of enrollees.

2. Department of Agriculture proposes to help implement the Young Adult Conservation Corps by contract. The proposed contract would have a 12-month term and would cross fiscal year lines. Monthly payment would be made in relation to the amount of services (which would vary from month to month) provided by contractor in the preceding month. This contract, to be funded with annual appropriations, may cover only services required to be performed in the current fiscal year and may not cross fiscal year lines. See cases cited.

done
Needs additional program
new work

A contracting officer in the Forest Service of the Department of Agriculture asks whether the actual management of the Young Adult Conservation Corps (YACC) may be carried out by a contractor. YACC was established as Title VIII of the Comprehensive Employment and Training Act (CETA) by section 101 of the Youth Employment and Demonstration Projects Act of 1977, Pub. L. No. 95-93, August 5, 1977, 91 Stat. 627.

In a letter responding to our requests for his comments, the Secretary of Agriculture endorses the contracting officer's request for a decision and advises that he supports the proposal to contract for the actual management of YACC projects. As both the Secretary and the contracting officer point out, the Department currently participates in a similar program under 16 U. S. C. § 1701 *et seq.* (1976), the Youth Conservation Corps (YCC), in which youths between the ages of 15 and 19 are employed to work on projects for

a period not to exceed 90 days per year. Section 1703(c) of that Act gives the Secretary of Interior and the Secretary of Agriculture specific authority to contract with any public or private non-profit agency or organization which has been in existence for at least 5 years for the operation of any YCC project. This provision enables the Forest Service to expand the YCC program without hiring additional personnel to manage the projects. Although no similar authority appears in YACC's enabling legislation, the Forest Service wishes to expand the YACC in the same manner.

The contracting officer asks:

"We can see that there may be provisions for contracting for segments of a residential program as per paragraph 3 of this inquiry [pertaining to transportation, lodging, subsistence, medical treatment and other services, supplies, equipment, and facilities] but is there authority for contracting for the actual management of these enrollees by a Contractor to include:

"Hiring of the enrollee?
Supervising the enrollees-on and off the worksite.
Keeping the time and attendance records?"

The purpose of the YACC is to provide employment and other benefits to youths who would not otherwise be currently productively employed. Section 801 of CETA, as amended. The law provides that enrollees of the Corps shall be selected by the Secretaries of Interior and Agriculture from candidates referred by the Secretary of Labor. Section 803(a) of CETA, as amended. The YACC is administered by the Secretary of Labor through interagency agreements with the Secretaries of the Interior and of Agriculture. While the Secretary of Labor is responsible for the overall administration of the YACC program, the Secretaries of the Interior and of Agriculture have the responsibility "to provide for" the actual implementation of the projects, including management, supervision, and discipline of the enrollees. Section 802 of CETA, as added by Pub. L. No. 95-93, supra, makes it quite clear that the responsibilities of the Secretary of Agriculture are by no means limited to the provision of transportation, lodging etc., although these duties are, of course, included within his mandate to be "responsible for an effective program at each [YACC] center."

The contracting officer is particularly concerned about the propriety of contracting out the management, supervision, and discipline

aspects of the Secretary's responsibilities because these duties could be characterized as personal services. Our Office has repeatedly held that as a general rule, purely personal services for the Government are required to be performed by Federal personnel under Government supervision. 6 Comp. Gen. 140, 142 (1926); 24 id. 924, 926 (1945); 32 id. 427 (1953). On the other hand, we have also observed in a number of cases that:

"* * * The requirement of this rule is one of policy rather than positive law and when it is administratively determined that it would be substantially more economical, feasible, or necessary by reason of unusual circumstances to have the work performed by non-government parties, and that is clearly demonstrable, we would not object to the procurement of such work through proper contract arrangement." 43 Comp. Gen. 390, 392 (1963).

See also 24 id. 272 (1944); 31 id. 372 (1952).

We have also held that:

"* * * Where a particular job or work is required to be done entailing temporary personal services and which no employee of the Government is qualified or available to perform--as appears to have been the case in the present matter--such services may be regarded as non-personal and may be engaged by contract." (Emphasis added.) 24 Comp. Gen. 924 (1945).

See also 6 id. 180 (1926).

In the instant case, the contracting officer states that there are no Government employees available to perform the management services in question. Moreover, these services appear to be an integral part of a larger task--to establish and operate YACC projects in accordance with an interagency agreement with the Secretary of Labor. This larger task necessarily entails a number of clearly non-personal services, such as provision of transportation, lodging, subsistence, etc. If the Secretary finds that it is not feasible or economical to divide the responsibility for providing such non-personal services and the responsibility for supervising and disciplining the enrollees, or that no qualified Government employee can be assigned to the latter task, we would have no objection to the proposal to contract for all aspects of the Secretary's responsibilities to administer YACC projects.

The single exception to the above statement is the matter of selecting the enrollees. As mentioned earlier, the youths are to be chosen from a list of candidates supplied by the Secretary of Labor. Section 803(a) of CETA, as amended. The decision to accept or reject a particular candidate and thus confer or deny a valuable Federal benefit is a sensitive matter which it does not seem appropriate to delegate outside the Government. Moreover, the selection of the enrollees is a preliminary step and not a necessary part of the contractor's responsibilities. Therefore, we believe this aspect of the Secretary's responsibilities should not be accomplished by contract personnel.

We do not believe it is significant that the YCC authorizing legislation contains authority to contract for the operation of its centers and the YACC legislation does not, since the YACC legislative history does not indicate a congressional intent to preclude this practice. The omission may possibly be due to the fact that any arrangements made by the Secretaries of Agriculture and Interior to administer the YACC program, whether through contracts or otherwise, must be in conformance with the interagency agreement with the Secretary of Labor who is not involved in the YCC program.

An additional question was raised about the obligation and expenditure of funds from one fiscal year for a service contract when the bulk of the services would be provided in the next fiscal year. The contract is described in the submission as "fixed price with a unit price based upon the accomplishment of 100 man-years of work by the end of the 12 month contract period." The first invoice that a contractor could submit would be at the end of the first 30 day period during which enrollees were actually performing work on conservation projects on Forest Service lands. We understand that other payments to the contractor will also be made in accordance with the number of enrollees to whom services are provided. The number of enrollees may vary from month to month.

In the absence of any specific legislative authority, a contract for management services, funded with annual appropriations, may be made only for services to be rendered during the current fiscal year and may not cross fiscal year lines. However, if the contract has an option to renew and the option is affirmatively exercised, the contract may be renewed if or when an applicable appropriation is enacted in subsequent years. See 37 Comp. Gen. 155 (1957); 42 id. 272 (1962); 56 id. 142 (1976).



For The Comptroller General
of the United States